

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY A. THOMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Liberty, MO

*Docket No. 98-2078; Submitted on the Record;
Issued October 17, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant's fall at home on June 29, 1995 was a consequence of an employment-related July 26, 1991 knee injury; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying merit review of appellant's claim.

The Board has given careful consideration to the issues involved, the contentions on appeal and the entire case record. The Board finds that the decision of the Office hearing representative dated June 11, 1997 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.¹

The Board also finds that on April 27, 1998 the Office properly denied merit review.

In an undated letter stamped received by the Office on January 28, 1998, appellant requested reconsideration and submitted additional evidence. In its decision dated April 27, 1998, the Office denied appellant's request, finding the evidence submitted repetitious and insufficient to warrant further merit review.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,² the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a

¹ The Board notes that appellant has three appeals before the Board: (1) Docket No. 98-1454, adjudicated by the Office under file number A11-138879, in which appellant is claiming that her disability from June 29 to November 24, 1995 was caused by an employment-related bilateral carpal tunnel syndrome; (2) Docket No. 99-744, adjudicated by the Office under file number A11-153000, in which she is claiming that she sustained an employment-related emotional condition; and (3) the instant claim, adjudicated by the Office under claim number A11-87984.

² Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.³ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁴ To be entitled to merit review of an Office decision denying or terminating a benefit, a claimant must also file his or her application for review within one year of the date of that decision.⁵

The issue in this case is whether appellant established that she sustained a consequential injury on June 29, 1995.⁶ With her request for reconsideration, appellant did not advance a point of law not previously considered, articulate any legal argument with a reasonable color of validity, or submit relevant and pertinent medical evidence. While she submitted additional evidence, it merely consisted of Office correspondence and memoranda, a statement of accepted facts, employing establishment correspondence and memoranda, a physical therapy note and two reports from Dr. Thomas Benbynista, a podiatrist, dated April 18 and October 16, 1991. All of the evidence was previously of record and none is relevant to the condition of appellant's right knee in 1995.

Consequently, the evidence submitted by appellant with her reconsideration request did not meet the requirements set forth at 20 C.F.R. § 10.138.

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.⁷ The Board finds that the Office properly denied appellant's application for reconsideration of her claim.

³ 20 C.F.R. § 10.138(b)(1) and (2).

⁴ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ It is an accepted principle of workers' compensation law and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause. As is noted by Professor Larson in his treatise: "[O]nce the work-connected character of any injury has been established, the subsequent progression of the condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause." Larson, *The Law of Workers' Compensation* §§ 13.00, 13.11(a); see also *Stuart K. Stanton*, 40 ECAB 859 (1989); *Charles J. Jenkins*, 40 ECAB 362 (1988).

⁷ See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The decisions of the Office of Workers' Compensation Programs dated April 27, 1998 and June 11, 1997 are hereby affirmed.

Dated, Washington, DC
October 17, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member